

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

- - -

IN RE:)
)
EQUIFAX, INC.,) CASE NO:1-17-MD-02800-TWT
CUSTOMER SECURITY)
BREACH LITIGATION) **ROUGH DRAFT**

- - -

Deposition of MR. GEORGE W. COCHRAN,
the Witness herein, called by the Plaintiffs
upon cross-examination, pursuant to the Federal
Rules of Civil Procedure, was taken before me,
Donna S. Smith, a Notary Public in and for the
State of Ohio, located at Regus, 2000 Auburn
Drive, One Chagrin Highlands, Suite Number 200,
in Beachwood, Ohio 44122, on Friday, December
13, 2019, beginning at 1:27 p.m.

1 **APPEARANCES:**

2 ON BEHALF OF THE PLAINTIFF:
3 Equifax, Inc., Customer Data
Security Breach Litigation

4 Mr. John Yanchunis, Esq.
5 JYanchunis@forthepeople.com

6 MORGAN & MORGAN
7 One Tampa City Center
8 201 North Franklin Street, 7th Floor
Tampa, Florida 33602
(813) 275-5275 - Phone
(850) 509-5641 - Cell
(813) 222-4736 - Fax

9 and

10 Mr. Patrick A. Barthle, II., Esq.
11 PBarthle@ForThePeople.com

12 MORGAN & MORGAN
One Tampa City Center
13 201 North Franklin Street, 7th Floor
Tampa, Florida 33602
14 PBarthle@ForThePeople.com
(813) 223-5505 - Office
(813) 229-4023 - Direct
(813) 222-4708 - Fax

16 **ALSO PRESENT:**

17 Mr. Ivan Bercian, Videographer
18 Cady Reporting Services
19 The Western Reserve Building
1468 West Ninth Street, Suite 440
Cleveland, Ohio 44113

1 **INDEX TO WITNESS**

2 **Witness** **D** **C** **RD** **RC**

3 George W. Cochran

4 By Mr. Yanchunis, Esq.

6

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

| | <u>PLAINTIFF</u> | <u>MARKE</u> | <u>IDENTIFIED</u> |
|----|---|--------------|-------------------|
| 1 | 1 - Notice of Taking Videotaped Deposition and Subpoena Relating to George W. Cochran. | 6 | 7 |
| 2 | 2 - Subpoena to George W. Cochran | | 7 |
| 3 | 3 - Letter dated 11/19/2019 to Equifax from George W.Cochran | 37 | 38 |
| 4 | 4 - Joseph Gregoria vs. Premier Nutrition Corp. - Motion for Attorneys Fees | 69 | 69 |
| 5 | 5 - Notice of Appeal | 78 | 78 |
| 6 | 6 - Stipulation-Gregorio vs. Premier Nutrition Corp. vs. Dave Mager | 79 | 79 |
| 7 | 7 - Anthem Inc. Customer Data Security Breach Litigation Order-Laura Fowles vs. Leona Boone vs. Anthem | 80 | 80 |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| 13 | | | |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |
| 21 | | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | | | |

PROCEEDINGS

THE VIDEOGRAPHER: We are on the record.

This is the beginning of Media 1 in the Deposition of George Cochran in the matter of: In Re: Equifax, Inc., Customer Data Security Breach Litigation. Case Number 1:17md-02800-TWT.

Today's date is December 13th, 2019. The time is, approximately, 1:27 p.m.. My name is Ivan Bercian, and I am the Videographer. The Court Reporter today is Donna Smith. We are here with Huseby Global Litigation.

Counsel, please introduce yourselves, after which the Court Reporter will swear in the witness.

MR. YANCHUNIS: John Yanchunis and Patrick Barthle, we both represent the plaintiffs.

- - -

MR. GEORGE W. COCHRAN, JR.,
being first duly sworn, was
deposed and testified as
follows:

- - -

-6-

2 BY MR. YANCHUNIS:

3 Q. Could you, please, state your full name and
4 address for the record.

5 A. George Willard Cochran, Jr.. 1385 Russell
6 Drive, Streetsboro, Ohio 44241.

7 Q. And you are a lawyer licensed to practice in
8 the State of Ohio?

9 A. Yes.

Q. And how long have you been a lawyer?

11 A. Since 1979.

Q. And you graduated from Case Western Reserve --

13 A. Yes.

14 Q. -- College of Law?

15 A. Yes.

16 - - -

17 Exhibit No. 1

18 was marked for the purposes

19 of identification

20 — — —

21 BY MR. YANCHUNIS:

22 Q. Let me show you a document. I marked this for
23 the purposes of identification as Exhibit Number 1, and
24 that is the subpoena in response to which you are
25 appearing here today?

1 A. This is the Notice of Deposition.

2 Q. I'm sorry. But you have --

3 A. I have the subpoena with me.

4 Q. Okay.

5 A. Yes.

6 Q. Let me show you Exhibit Number 2. This is the
7 true and correct copy of the subpoena. Is it not?

8 A. Yes.

9 Q. Have you ever had your deposition taken
10 before?

11 A. That's a good question. I can't remember ever
12 giving my deposition.

13 Q. Have you had an occasion, however, to take the
14 deposition of others in litigation that you've handled?

15 A. Yes.

16 Q. So I'll go through these because I know you
17 know them well, but in connection with your deposition
18 here today, I am here to ask you questions regarding the
19 subject matter of the case pending before Judge Thrash
20 and the objections which you filed, and, to the --

21 Although, there is a Videographer capturing
22 your visual testimony and, of course, your audio
23 testimony, we have a Court Reporter who's making a
24 transcript of everything that's being said in the room,
25 so in connection with the deposition, if you could

1 please give me audible responses -- verbal responses.

2 Excuse me, not audible, so that we have a clean record.

3 Is that agreed?

4 A. Yes.

5 Q. Mr. Cochran, also, in connection with your
6 deposition, if I were to ask you any question, please
7 wait for my question to finish before you answer so the
8 Court Reporter can take down both of the question and
9 the answer. Okay?

10 A. Okay.

11 Q. Also, if at any time I ask a question that you
12 do not understand or you would like for me to rephrase
13 it in any way so that you can respond, say so or
14 indicate, and I will be happy to rephrase it.

15 Do you agree to that?

16 A. Yes.

17 Q. In connection with your appearance here today,
18 are you taking any medication or do you have any health
19 conditions which might affect your memory or your
20 ability to testify truthfully?

21 A. No.

22 Q. We never met before, correct?

23 A. We have not.

24 Q. Okay. And you understand that you have been
25 given an Oath and that you're testifying under Oath here

1 today?

2 A. Yes. Yes.

3 Q. What is the nature of your practice as a
4 lawyer?

5 A. Currently?

6 Q. Yes, sir.

7 A. Part of my practice is consumer litigation,
8 especially, concentrating in Mobile Home Park Law in
9 which for years, I was Executive Director of a
10 non-profit called Mobile Justice and that has since
11 closed down, but I still devote some of my time to that.

12 I also do some personal injury. I also engage
13 in representing class objectors.

14 Q. By that you mean you represent individuals who
15 have objections to the settlement of class actions
16 pending around the country?

17 A. Yes.

18 Q. How do people come to find you as a lawyer
19 representing or willing to represent objectors?

20 A. Well, sometimes -- it's various ways that that
21 happens. I think the most effective way has been to
22 just to let friends know in a one way email of a
23 particular subject matter, whether it's this or any
24 other matter, and then let them respond under our Ohio
25 Ethical Rules and allow them to do that.

1 Q. Have you ever filed a class action on behalf
2 of a plaintiff?

3 A. Yes.

4 Q. How many times?

5 A. Probably dozens.

6 Q. What kind of cases were those?

7 A. Primarily, Mobile Home Park class actions.

8 Q. Those were on behalf of a resident against an
9 owner of a mobile home park?

10 A. Owner/operator.

11 Q. Have you filed any other types of class
12 actions besides those on behalf of residents of mobile
13 home parks?

14 A. Yes.

15 Q. What kinds of cases do they range from?

16 A. Some are consumer related. I'm just from
17 memory remember one against the City. That's all I can
18 think of right now.

19 Q. In connection with those class actions have
20 they been in State Court or in Federal Court, or both?

21 A. I believe -- now, most of them have been in
22 State Court. I am remembering one as it's coming to me.
23 Forgive my memory here -- against Six Flags. Another
24 one against, I think it was Federal Court in Illinois
25 regarding what's called the Fast Pass Turnpike System.

1 Mostly, State court, though.

2 Q. Are you licensed to practice law in any other
3 state besides Ohio?

4 A. Yes.

5 Q. What other states?

6 A. Kentucky.

7 Q. How long have you been licensed to practice in
8 Kentucky?

9 A. Approximately, 2009.

10 Q. Have you ever taken a class -- have you ever
11 certified a class action or had a court to certify a
12 class action that you had filed?

13 A. Yes.

14 Q. On how many occasions?

15 A. I don't recall.

16 Q. More than 10, or less than 10?

17 A. Probably, less than 10.

18 Q. Have you ever tried a class action that has
19 been certified by a Court?

20 A. Yes.

21 Q. On how many occasions?

22 A. I can only think of one.

23 Q. And what case was that?

24 A. It was one of my earlier mobile home park
25 cases against a prominent mobile home park operator in

1 Portage County involving the issue of whether a pet fee
2 was unreasonably charged.

3 Q. A fee charged to residents --

4 A. For having --

5 Q. -- for an amount that you thought was in
6 access of what the law provided?

7 A. Well said.

8 Q. Were you successful in that case?

9 A. Yes.

10 Q. What was the outcome?

11 A. Damage award and attorney fees?

12 Q. Was it appealed?

13 A. No.

14 Q. Have you ever defended a class action?

15 A. No.

16 Q. Have you ever represented family members as
17 named-plaintiffs in a class action?

18 A. Yes.

19 Q. On how many occasions?

20 A. I can't remember.

21 Q. Are you related to Jeffrey Cochran?

22 A. Yes. He's my son.

23 Q. Would that have been the case of Jeffrey
24 Cochran versus Illinois State Toll Highway Authority?

25 A. Yes.

1 Q. And that was filed in the Northern District of
2 Illinois?

3 A. Yes.

4 Q. What was the outcome of that case?

5 A. We lost on the merits and we appealed and
6 lost. It was affirmed on appeal.

7 Q. Was it class certified? Was the certification
8 denied, or did it get that far?

9 A. I don't think it got that far.

10 Q. Any other cases where you've represented a
11 family member as a named-plaintiff in a class action?

12 A. Yes. My two daughters were the plaintiffs in
13 a class action against Six Flags.

14 Q. What are their names?

15 A. Sara Henry and Jennifer Cochran.

16 Q. I assume from your discussion of the law that
17 you practice, that you have relationships with clients
18 on a contingent fee basis?

19 A. Yes.

20 Q. In other words to make certain we are talking
21 about the same type of relationship, it's one in which
22 payment to you for your fees is contingent upon the
23 successful outcome of the litigation for which you are
24 retained?

25 A. Yes.

1 Q. What percentages do your contracts in your
2 contingency fee arrangements typically call for?

3 A. Typically, one-third.

4 Q. I don't know the rules in this state, but is
5 one-third what the Bar allows, or is it just what Courts
6 in Ohio typically allow?

7 A. I think both.

8 Q. Have you had any conversations with any of the
9 individuals who filed objections to the settlement in
10 this case?

11 A. No.

12 Q. Have you spoken to anyone other than your
13 spouse about the deposition here today, or the subject
14 matter of the deposition?

15 A. When I left my house this morning to prepare
16 to come here, a couple of family members were helping
17 us. We just bought a home. They were helping, and I
18 said, "please pray for me. I'm going to, you know, I
19 think my first ever deposition." That's the only one I
20 have told.

21 Q. Well, I won't be harsh on you.

22 A. Appreciate that.

23 Q. I'll commit to that. If I am, just tell me.

24 A. We all should undergo one at least once in our
25 careers. It'll keep us humble.

1 Q. Probably change our perspective of when we
2 take them or defend them.

3 A. Yup.

4 Q. When did you first become aware of the data
5 breach involving information in the position of Equifax?

6 A. It was some time in this year. Probably, in
7 the Fall.

8 Q. And how did you find out about it? How did it
9 come to your attention?

10 A. News reports.

11 Q. When you say, "Fall," would that have been in
12 September or October?

13 A. I'm not sure.

14 Q. Was the news that came to you that a case had
15 been settled or that the data breach had occurred?

16 A. The news that had caught my attention is it
17 had been settled.

18 Q. You had not heard about the data breach of
19 Equifax prior to that time?

20 A. I don't recall hearing about it. I may have,
21 but it didn't catch my attention.

22 Q. Did you make any determination as to whether
23 or not your information was impacted in that data
24 breach?

25 A. Not at that time.

1 Q. Have you since?

2 A. Yes.

3 Q. And how did you do that?

4 A. Can I just answer in a narrative at this
5 point?

6 Q. Sure.

7 A. It might save some of the questions.

8 Q. Yeah.

9 A. Once I heard of the settlement by that time, I
10 happened to be very busy in my practice, so I made a
11 mental note to analyze that settlement, as I do any
12 other settlement.

13 By the time I had a moment to do that,
14 however, it was already in November. That I know,
15 because when I first looked it up, I saw the deadline
16 for objections, and I thought, "oh boy. You know, I
17 have held off too long on this."

18 And so, I believe I took several hours of one
19 day, not quite a whole day, but probably a good part of
20 the day to do what I normally do, you know, pull up
21 documents, so I'll know what to look for in analyzing a
22 settlement.

23 Then, a couple of things really jumped out at
24 me about this particular one and then I realized that
25 A: I didn't have time to fully analyze. I never file an

1 objection until its fully analyzed, because I do reject
2 a lot, even though, I'm initially interested.

3 And, number two, there was no time to even get
4 the word out to see if someone had been affected by it
5 and to meet with them and, you know, all this stuff.

6 So, then, I decided, "well, 150 million class
7 members. I think -- I bet you I'm affected. I've lived
8 long enough."

9 So I went on the Court -- the settlement
10 website and as you know that's an online -- nice, simple
11 online claim form, and you put in, I think, your last
12 name and, maybe, the last four digits of your social
13 security number or something like that and it came out
14 that I was impacted. I was compromised; my account and
15 my information.

16 That is when I decided, "well, I don't have
17 time to do any more analyses," just based on the two
18 concerns I had, which I categorize as initial concerns.
19 That leaves me then to go back when there's time to do a
20 full analyses. I didn't have time to do that.

21 So I wrote a one-page letter summarizing my
22 two concerns on my own behalf, because I felt like,
23 "what the heck. I'm a class member. I have the same
24 right as anybody else." So this time I won't be
25 representing somebody, I'm just gonna be a prose

1 objector.

2 Q. Do you have any kind of credit monitoring or
3 identity theft protection service?

4 A. No.

5 Q. Have you ever?

6 A. No.

7 Q. Have you ever been affected or impacted by a
8 data breach or identity theft of any kind?

9 A. Not to my knowledge.

10 Q. When you found out online by going to the
11 settlement website that you were a class member, did you
12 go back and check your bank statements to see if you had
13 sustained any type of loss that you had not -- or charge
14 that you had not authorized?

15 A. I am embarrassed to say, no, I have not. I am
16 still just as busy today as I was then, because that
17 wasn't that long ago. I think it was November 27. I
18 pulled out my objection letter in preparation for today
19 and I think it was November 20 -- whatever it was. Two
20 days before the deadline, and so it hasn't been that
21 long ago.

22 And, no, I have not. I'll be honest with you.
23 I just haven't.

24 Q. Have you pulled your credit report with any of
25 the three major credit bureaus to see if there are any

1 abnormalities or matters that come up that you're not
2 familiar with, like, opened accounts that you may not
3 have authorized?

4 A. You're getting me nervous. No, I have not.

5 Q. When you found out that you had been apart of
6 the breach, did you file a police report or any report
7 with the FBI or the FTC or the Consumer Fraud Protection
8 Bureau?

9 A. No.

10 Q. So what you did do though is file an objection
11 to this settlement?

12 A. Yes, because you get the benefits as you know,
13 even though, you object.

14 Q. You filed a claim for benefits in this case?

15 A. Yes.

16 Q. And what did you seek in that claim?

17 A. The three part service of -- does it go for
18 four years? The four-year monitoring service.

19 Q. So you elected for the credit monitoring?

20 A. Yes.

21 Q. That's a valuable service provided to
22 consumers?

23 A. I wouldn't know enough to know. It's a value
24 to me. I definitely want that. Sure.

25 Q. Did you make a claim for any other benefits in

1 this settlement?

2 A. If I recall right, I wanted to. If I could
3 take advantage of the additional four year or not four.

4 There's an additional one provider service
5 that I couldn't figure out how to -- the claim form only
6 asked the simple question, do you want the three? And
7 it said something, like, we'll let you know before that
8 expires.

9 Maybe, I exercised that option then. I can't
10 remember it, but I wanted to take advantage of both for
11 reasons I'll get into here in a little bit.

12 Q. In any of the litigation that you've handled,
13 have you ever handled a data breach case representing a
14 plaintiff?

15 A. No.

16 Q. Have you ever represented an individual in a
17 privacy case -- privacy violation?

18 A. I'm not sure.

19 Q. What's your understanding of the claims that
20 were asserted in this case on behalf of the class?

21 A. Well, there's the Federal Fair Credit
22 Reporting Act claim, which is the primary claim. I
23 think that was your first count. I think your second
24 count was negligence. Those are the two I would have
25 thought would have been the strongest.

1 Q. Did you review the Order on the Motion to
2 Dismiss that was filed in this case by the Defendant?

3 A. No.

4 Q. Do you know whether or not the Fair Credit
5 Reporting Act claim survived that Motion to Dismiss?

6 A. No.

7 Q. Do you know what law applied to the class
8 regardless of where they lived in the United States in
9 this case?

10 A. I believe the consumer statute of Georgia.

11 Q. What about negligence?

12 A. I assume that to be --

13 Q. Whose law? Whose State law on the issue of
14 negligence applied?

15 A. Presumably, Georgia. I know that you also
16 pled individual state consumer statutes, including Ohio.
17 I do remember seeing those.

18 Q. Did you read the answer that was filed in this
19 case by Equifax?

20 A. No.

21 Q. Are you aware of what the Court said in its
22 Order on the Motion to Dismiss as to whose State law
23 would apply to the common law claims of all class
24 members, regardless of where they lived?

25 A. I'm only aware that they granted the Motion in

1 part and denied the Motion in part. That's all I'm
2 aware of.

3 Q. So you're not aware that in the Court's order
4 on the Motion to Dismiss that the Court stated it would
5 apply Georgia law to the common law claims?

6 A. I'm not aware from that. I deduced that
7 logically as a lawyer.

8 Q. Are you aware that in its order on the Motion
9 to Dismiss, the Court found that Equifax owed the
10 plaintiffs a duty of care to safeguard the personal
11 information in its custody?

12 A. I'm not aware of anything from that order,
13 since I didn't read it.

14 Q. Okay. Are you aware of a case called the
15 Department of Labor versus McConnell?

16 A. No.

17 Q. So you're not aware if in the Department of
18 Labor versus McConnell, the case decided after Judge
19 Thrash' order on the Motion to Dismiss in this case, if
20 the Georgia Supreme Court found that there was no common
21 law negligence duty owed for the Georgia Department of
22 Labor to protect personal information including social
23 security numbers?

24 A. No.

25 Q. Do you see how that would put in jeopardy the

1 claims of the class under the common law claims --

2 A. Yes.

3 Q. -- if the Georgia Supreme Court had decided
4 there was no duty. And as a Federal Judge, the Federal
5 Judge in Georgia would have to apply what the Supreme
6 Court -- what the State said about the law?

7 A. It severely impacted the negligence count.

8 Q. Did you assess the merits of the underlying
9 case before you filed your objection, or even at this
10 point?

11 A. No. I didn't have time to do any of that.

12 Q. Do you know whether or not this was a good
13 case to bring on behalf of the plaintiffs to the extent
14 that it was both viable and winable?

15 A. Yeah, I knew that because I think something
16 like 30 firms competed for it with lead counsel and/or
17 were literally 200 class actions. That's what I looked
18 for. I think there were over 100 class actions filed.

19 Q. Do you know how many Courts in this country
20 have certified a data breach class action?

21 A. No.

22 Q. Would that number impact your decision as to
23 whether or not this was a good case to bring?

24 A. I feel like you're asking me a different
25 question. The first one was liability. You're talking

1 certifiability now?

2 Q. That's true because, obviously, if it was only
3 liability that would mean for a plaintiff you might
4 prevail, but not for the class.

5 A. No. I just wanted to clarify --

6 Q. Yes, sir.

7 A. -- because it felt like you switched gears on
8 me. Obviously, certifiability is a critical issue.

9 Q. All right. Do you see in a case that if a
10 data breach occurs, there's something called Article III
11 Standing?

12 A. Yes.

13 Q. And what do you understand Article III
14 Standing to be?

15 A. If I have a cognitive injury that gives me
16 standing to assert and then it depends on state
17 jurisdiction law verses federal jurisdiction law.

18 Q. So if you get past the Motion to Dismiss, you
19 have an understanding that at trial, then you have to
20 prove that that injury that you alleged is causely
21 connected to the data breach, correct?

22 A. Yeah, I suppose so.

23 Q. How would you prove that?

24 A. I'm not sure how I would prove it. You want
25 me to think about that for a minute?

1 Q. Well, how would you prove it for 145 and-a-
2 half billion people?

3 A. If you're getting to the point that you had
4 these obstacles, I can see that you guys had some
5 obstacles -- serious obstacles. I'm not denying that.

6 Q. Okay.

7 A. That's why you're such a good firm.

8 Q. Would you be surprised to hear that there has
9 been no damage class certified in a data breach case
10 like this?

11 A. Yes, I would be.

12 Q. As a lawyer there are occasions, are there
13 not, that you believe as a lawyer it's prudent to settle
14 a legal dispute that you are handling on behalf of a
15 client?

16 A. Yes.

17 Q. What do you take into consideration in
18 determining whether to settle a case?

19 A. Likelihood of prevailing on the merits. I
20 need to ask. It depends on what stage of the
21 litigation.

22 Are you saying immediately prior to settling?
23 Immediately prior to trial or if it's earlier than that,
24 it's likely the surviving of a dispositive Motion, and
25 how strong of an evidence I have put together.

1 Q. How about the proving that the data breach led
2 to injury to the class?

3 A. That I can't comment, because that's not in my
4 area of law.

5 Q. That would be something that you would have to
6 take into consideration or the lawyers would have to
7 take into consideration as whether to settle this case,
8 correct?

9 A. Well, as I said, I don't know enough about
10 that area of law. I can say in my area of law, I would
11 have to take it into consideration. That's the extent
12 of the -- I think you're asking for a professional
13 opinion here. I think I have -- that's the limit of my
14 own knowledge, is my areas of practice.

15 Q. But as a lawyer you have to take into
16 consideration whether or not what you allege you can
17 prove at trial, correct?

18 A. Of course. What I allege, right.

19 Q. In light of the McConnell Decision where the
20 Supreme Court eventually found that there was no duty --
21 common law duty owed to the class to protect information
22 in that case, doesn't that reflect that it was prudent
23 to settle this case?

24 A. I'd have to read the opinion as to the
25 rationale.

1 Q. Do you have any problems with the fact that
2 the case was settled or is it your problem that the
3 relief isn't good enough?

4 A. The relief isn't good enough.

5 Q. Okay. So you don't have any problems that the
6 case was settled, because it might have been lost at
7 trial?

8 A. I don't have any problems with the case being
9 settled, based on what I understood.

10 Q. And you understand that in connection with
11 risk assessment, that in settling a case, lawyers
12 sometimes advise their clients that if I can't get 100
13 percent, but I can get part of the relief I might
14 otherwise have gotten at trial?

15 A. I can see that. Yes.

16 Q. What is your understanding of what the
17 settlement in this case provides to the class?

18 A. Certain monetary relief and certain
19 non-monetary relief.

20 Q. What is the size of the Settlement Fund?

21 A. The private MDL Settlement that we're talking
22 about?

23 Q. Yes, sir.

24 A. As opposed to the -- I know the State's got a
25 settlement. Am I correct?

1 Q. Well, we're talking about the settlement in
2 the case where you filed an objection.

3 A. The \$380 million dollars? I forgot what the
4 question was.

5 Q. Yes, the size of the Settlement Fund.

6 A. Well, there's \$310 million on your own and
7 then at the urging of whatever governmental entity that
8 was, the federal agency, there was an additional \$70
9 million.

10 I think there's the possibility of adding \$125
11 million. It gets very complicated, but as to -- if
12 you're asking how much of that ends up in the hands of
13 class members than not, I'd say most of it doesn't.

14 Q. Where does it go? Where does most of it go?

15 A. Paying for services, I believe.

16 In other words, there are caps on actual
17 losses, you know, pecuniary losses whether it's damages
18 incurred from a breach, expenses relating to a possible
19 breach, or time lost dedicated to it.

20 Those are smaller figures, as I recall. Like,
21 in the \$30 million dollar range. They have caps on
22 them.

23 Q. So you were referring to the out-of-pocket
24 losses that consumers would --

25 A. There's also an alternate. Like, if I already

1 have a service, the \$125.00 -- the infamous \$125.00
2 payment, I think that's a \$31 million dollar cap,
3 something like that.

4 Q. But what's the cap on the out-of-pocket
5 lawsuit before we move into the --

6 A. I don't recall right now. I can't remember.

7 Q. So where does most of the \$380.5 million
8 dollars go? Because you talked about caps on an
9 individual claim is what I think you are referring to,
10 correct?

11 A. Uh-huh.

12 Q. You used a non-verbal response. Does that
13 mean, yes?

14 A. Yes.

15 Q. Yes, so where does most --

16 A. I'd have to look at the settlement again. I
17 already forgot. I looked at it this morning, because I
18 have terrible memory and I already -- if I could look at
19 the settlement agreement, I can go through it real quick
20 for you.

21 Q. You are aware, though, that there is another
22 \$125 million dollars potentially available for
23 out-of-pocket claims?

24 A. Yes.

25 Q. Are you aware of the other data breach

1 settlements that have been reached in the United States
2 in other class actions?

3 A. Not all of them. No.

4 Q. Is there a settlement that comes anywhere near
5 the amount of money that's been put aside to pay claims
6 in this case?

7 A. I read that this is the largest.

8 Q. Do you know if any other settlement comes
9 close in terms of numbers?

10 A. I'm not aware of it.

11 Q. So you're aware that there's a cap --
12 individual caps for individual consumers that's capped
13 at \$20 million dollars per claim?

14 A. Yes, I remember that.

15 Q. Are you aware of what other caps are in other
16 data breach settlements and how this cap compares with
17 those?

18 A. No.

19 Q. You are aware that time spent dealing with the
20 repercussions of the breach are compensable under the
21 settlement, correct?

22 A. Yes.

23 Q. Do you know how many hours or at what rate
24 people can?

25 A. For some reason 25 hours at \$20.00 an hour, or

1 vice versa, or something like that.

2 Q. 20 hours of time at \$20.00 per hour for
3 documented losses. And, then, are you aware of the
4 self-certified no documentation required?

5 A. I am aware of it.

6 Q. Do you know how those amounts compare to what
7 other data breach settlements reach around the country?

8 A. Not really.

9 Q. I think you testified that you knew that
10 credit monitoring was provided by the settlement and
11 that you, yourself, made a claim for the four years of
12 three Bureau credit monitoring, correct?

13 A. Yes.

14 Q. And you are aware that there's an additional
15 six years of one Bureau monitoring provided by Equifax?

16 A. I couldn't remember what the numbers was, but
17 yes, more or less.

18 Q. Are you aware of how this compares with other
19 prior settlements in other data breach cases?

20 A. No.

21 Q. Are you aware what the retail value of that
22 credit monitoring is?

23 A. I believe it was reported that it's something
24 over a \$1,000 dollars a year or something.

25 Q. How about \$1,200 for four years?

1 A. Oh, okay.

2 Q. And then six years?

3 A. I did read that. Yeah.

4 Q. Okay. And then, six years of one Bureau at,
5 approximately, \$720.00?

6 A. I understand that's what it's reported as,
7 yeah.

8 Q. That's what a consumer would have to pay you,
9 you understand to get the same type of benefits?

10 A. Well, I don't know that myself. I read that
11 was reported as such.

12 Q. So you have not made a determination one way
13 or the other whether that's accurate?

14 A. No.

15 Q. Are you familiar with what Identity
16 Restoration Services are?

17 A. Not as well as I would like to be.

18 Q. What do you understand about them -- that
19 service?

20 A. The concept of -- if you're -- if it's
21 damaged, then there's some action that happens to
22 restore it, but I don't have any idea of the specifics.

23 Q. Do you believe that to be a valuable benefit
24 for members of the class?

25 A. It depends on the, you know, the -- and the

1 details. You know, I don't know what exactly is
2 considered in restoration. I'd have to read that.

3 Q. Okay. And you have not done that prior to
4 today?

5 A. No.

6 Q. And you didn't do that prior to filing your
7 objection?

8 A. No.

9 Q. Are you familiar with the concept of
10 Alternative Cash Compensation?

11 A. Yes.

12 Q. And what is that?

13 A. As I said earlier, if a class member already
14 has -- is paying for a credit monitoring service, then
15 they can apply for cash, a one time payment up to
16 \$125.00, depending on how much -- how many claims are
17 made.

18 Q. Do you know how many other settlements of data
19 breach cases have provided that benefit?

20 A. No.

21 Q. Do you know as to what extent that any have?
22 Do you know what the monetary benefit was in those
23 cases?

24 A. No.

25 Q. Are you aware whether or not the settlement

1 here provides any injunctive relief or business practice
2 changes that will be made a part of the Court's final
3 judgment?

4 A. Yes.

5 Q. Do you know if the settlement requires Equifax
6 to spend a certain amount on information security?

7 A. I wasn't aware that they were required to
8 spend a certain amount. My recollection is estimates of
9 what they were going to dedicate to achieve that result.

10 Q. So you'd be surprise to learn then that
11 Equifax would spend a million of a billion dollars on
12 data security in related technology? That would
13 surprise you?

14 A. You said a billion, right?

15 Q. A billion.

16 A. Okay. It would not surprise me because of the
17 size of their databases. This is by-far the largest
18 consumer database in history as well; 150 million
19 customers, you know, or people.

20 Q. What was lost in the data breach?

21 A. What was lost?

22 Q. Yes.

23 A. I can tell you my biggest concern --

24 Q. Well, no --

25 A. -- when I wrote my letter.

1 Q. Well, what were the bits of information taken?

2 A. I'm not technical enough to know.

3 Q. Okay. But you were able to make comparisons
4 about the size of this breach to other breaches and I'm
5 trying to discern how you know that.

6 At first it would involve what you know about
7 this breach, so that we can talk about other breaches?

8 A. I, unfortunately, am limited to what is
9 reported to me as a class member and in your own
10 complaint it's -- I think you identify it as 150 million
11 people affected, and in terms of what was taken, and in
12 plain English, my big concern was my Social Security
13 number.

14 Q. Do you know what else was taken?

15 A. No, I'm not sure. That one is the one that
16 made me stop and want to write the objection.

17 Q. Do you know of any other settlement that has
18 required the amount being required here to spend on data
19 security in related technology?

20 A. No, I am not aware.

21 Q. Do you know of whether this company will be --
22 whether the injunctive relief or its data security in
23 related technology will be monitored by an independent
24 third party?

25 A. If you're referring to -- what is it called?

1 Experian, or -- I read somewhere in there that -- I'm
2 not sure if I'm saying the name right. Experian, I
3 think may have that kindof a function.

4 Q. Do you know what other settlements of data
5 breach cases had as a component independent monitoring
6 by a third party?

7 A. I'm not aware.

8 Q. Do you think that's a good benefit for the
9 class?

10 A. Of course, it's a benefit. Yeah.

11 Q. Isn't it there an amount in access of a
12 billion dollars that you believe should be spent by
13 Equifax to maintain data security and related
14 technology?

15 A. I don't know enough to know how much it would
16 take to do an adequate job.

17 Q. Do you know one way or the other whether the
18 lawyers representing the plaintiffs in this case -- in
19 the class had an expert to make that evaluation?

20 A. I don't know, but I would assume he would.

21 Q. Are you familiar with the claims period in
22 this settlement?

23 A. Generally, I think there's two claims period.
24 There's the initial claims period from the date of the
25 Court order approving notice to the class through

1 January 20th, 2020.

2 Then, there's the subsequent claims period,
3 and I'm not sure exactly how long that is. Four years,
4 maybe, or longer. I am not sure how long it is.

5 Q. Do you think that's a favorable benefit to the
6 class, an extended claims period?

7 A. Yes.

8 Q. Are you familiar with the concept of reversion
9 in a class action settlement?

10 A. Yes.

11 Q. What is that?

12 A. Any residual of an actual settlement pull in a
13 class action that's left over after claims. How the
14 claims are paid and expenses and fees goes back to
15 the defendant.

16 Q. Is there a reversion in this case?

17 A. I believe not.

18 - - -

19 Exhibit No. 3

20 was marked for the purposes
21 of identification.

22 - - -

23 BY MR. YANCHUNIS:

24 Q. Let me show you a document which I have marked
25 for purposes of identification to your deposition as

1 Exhibit 3. It proports to be a letter on this
2 stationary of George W. Cochran, dated November 19,
3 1999.

4 Are you familiar with this document?

5 A. 2019.

6 Q. 2019. Excuse me.

7 A. Yes. I'm old, but not that old.

8 Q. And this is a letter that you prepared?

9 A. Yes.

10 Q. And that's your signature at the bottom?

11 A. It is.

12 Q. How did you reach the conclusion that the
13 amount of the settlement is grossly inadequate to
14 compensate for the potential loss that may be sustained
15 by the class?

16 A. My answer also incorporates Point 2 of this,
17 but I'll explain.

18 As I said earlier, I read about the
19 information that was not at risk that had been
20 compromised, and when I saw a social security number,
21 that jumped out at me, because I am 66.

22 This monitoring by my calculation has to run
23 out within 10 years, I believe, which puts me at 76, and
24 if I'm still here or not, my fear was that my wife could
25 inherit a very serious identity theft problem and I did

1 not want to leave her as a widow with that kind of --
2 she has no idea of anything about what's going on with
3 this, so I if I may, I would like to incorporate Point 2
4 with that answer.

5 "Studies show that hackers uses the
6 compromised information years after the damages claims
7 under the settlement has expired."

8 The day that I dedicated to looking at this in
9 November, I did some Internet research, because I wanted
10 to learn more about it and several sources stated that
11 this could be inadequate, even though, it sounds like a
12 long period of time, but hackers have been known to hold
13 onto this information for years and years and then they
14 use it at the right time when it's all settled down.

15 And since it's a social security number, as
16 you said in your own complaints, social security numbers
17 are permanent.

18 I mean, I think you can't even change it if
19 you wanted to, unless, you qualify under government
20 regulations or something.

21 Even then, they can tie the old number to the
22 new number if you have the same address, and so I got
23 really fearful for my wife.

24 I didn't tell her this, but I quietly said,
25 "oh, no. My gosh."

1 But whether that's accurate or not, I don't
2 know enough to say, but that got my attention.

3 I particularly remember one of the Attorney
4 Generals. He might have been from Maryland who is
5 quoted as being very concerned about it at this point.

6 And so, if that happens, if that worse case
7 scenario happens, then, you know, there's no protection.
8 That's it.

9 We are giving, as you know, like a permanent
10 and complete release that even satisfies California
11 stringent. I've dealt with cases with the California
12 Release Provision that includes unknown claims. This is
13 it.

14 Q. So what would be the settlement that you would
15 want to see to protect that liability that you say would
16 be out there for years, and, maybe, even after your
17 death?

18 A. I think the nature of the problem tells you
19 the nature of the solution. I hate to tell them, but if
20 a Jury saw this, they might have said, you will have to
21 continue being responsible perhaps for the lifetime of
22 the current of those social security numbers that are
23 now in effect.

24 Now, as to whether what would actually -- to
25 the extent that it would actually happen, I have no way

1 of knowing, but I would have felt a lot better about the
2 fairness of the settlement if that was at least provided
3 for since everyone recognizes that is a real
4 possibility. The experts says that's a real possibility
5 here.

6 Q. But how would you settle that?

7 A. I don't know.

8 Q. How would you come up with --

9 A. I'm not sure you can settle it. You know, you
10 may have gone to trial on that and that's a tough call
11 and I have no -- you know, I don't want to do your job.
12 I have no way near the information you have to be able
13 to analyze them.

14 Q. Well, how would you try it if you didn't
15 settle it? How would you try the factual scenario for
16 145 and-a-half million people?

17 A. Well, as a class action. You mean, for
18 representing the plaintiff?

19 Q. Yes. How would you try that?

20 A. I'm glad you think that highly of me.

21 Q. Well, you think about the settlement, and I am
22 trying to figure out why you think it's inadequate?

23 A. Because I care about my wife.

24 Q. So why not opt out of the settlement and sue
25 Equifax yourself?

1 A. Well, as you well know the damages
2 individually, there are no damage yet for that, first of
3 all.

4 And, secondly, I cannot even if I had the
5 money, there's no way that I could just find the experts
6 that you all guys have that would get their attention,
7 and so forth.

8 I mean, this clearly has to be a class action.
9 That's the given.

10 As a class member, I have a right to -- I
11 won't even use the word "objection", voice my concerns.
12 It's a concern that I have.

13 Q. But you understand that in connection with
14 what you articulate, you have to take into consideration
15 in settlement, the fact that if you took a case and lost
16 class certification, you would have no ability to settle
17 that as a class. You know that, don't you?

18 A. Say that again. My memory is --

19 Q. You understand that if you lost the ability of
20 certifying a class --

21 A. Yes.

22 Q. -- that you would end up with just the
23 individuals who filed the case?

24 A. Yes.

25 Q. And then the class would not get any relief on

1 that.

2 A. You're absolutely right. I think as I am
3 trying to think about it here, perhaps, robbing Paul to
4 pay Peter, you may want to have less money dedicated to
5 preventative measures and more to actual damaged
6 claimants for a longer period of time. I don't know.

7 Q. Well, it seems to me that you are talking
8 about credit monitoring, like, and not money; isn't that
9 true?

10 A. Well, that's one thing that I'm, actually,
11 unclear about. I thought about it this morning as I --
12 am I -- what I'm really concerned about is some hacker
13 waiting and then using my social security number to
14 cause harm to my wife down the road and then afterwards,
15 I got a released claim.

16 Is the monitoring future bad acts or what does
17 it do about these guys who already have these numbers?
18 I know it's unusual, but maybe you can help clarify the
19 question by answering my question.

20 Q. You are not aware that the credit monitoring
21 that you signed up for as a claimant provides for
22 monitoring of future activity that might occur in
23 connection with the use of information lost in the
24 breach?

25 A. Yes. My question is: Let's say that find

1 something, so what happens then? If it's already -- say
2 they take all of my wife's accounts. You report that to
3 me or to her, so what do I do about it?

4 Q. Well, let me ask you this: How do you know it
5 was taken by the cyber criminals that took it in this
6 case?

7 A. You would not.

8 Q. So doesn't that kind of present a proof issue?

9 A. Yes.

10 Q. So you can understand that the lawyers in this
11 case has the measure in taking into consideration, not
12 only the risk of certification, but the McConnell
13 Decision that was before the Supreme Court in Georgia,
14 and also establishing causation between something
15 happening years from now and the breach that occurred
16 here.

17 A. Well --

18 Q. Not easy, correct?

19 A. Well, I would change that hypothetical a
20 little bit by saying from the defendants viewpoint, they
21 would probably be unwilling to accept that risk --
22 business risk, unless, it was traceable.
23 As they say in the settlement language, fairly
24 traceable, I think. I thought was a interesting way to
25 put that, fairly traceable, I think, or to this

1 causation.

2 I mean, yeah. I doubt that it would be much
3 of a challenge for them to be willing to settle for
4 something that they would see as a blank check for any
5 bad guy out there.

6 What I'm saying is, it makes it more difficult
7 to settle and it may have been very difficult to win a
8 trial, but that is my answer to your question of why I
9 wrote number one.

10 Q. But your focus here is really about the length
11 of credit monitoring. Not about the amount of money
12 that has been set aside to pay claims?

13 A. Well, like I say in my hypothetical, if my
14 wife lost all of her savings -- you know, because if we
15 could prove it was caused by this breach way back in
16 2017, or whenever it was, then I would, you know, wish
17 to get some portion of that money back, but that isn't
18 gonna happen. That's not the way it's structured.

19 Q. And you understand that that would be a
20 significant challenge?

21 A. Yeah, I do. And I'm not making light of it at
22 all. And I'm not saying this is necessarily a deal
23 breaker. I'm just exercising my rights to say this is
24 why it caught my attention, and I'm just one guy.

25 Maybe a lot of seniors over 65 would be

1 concerned about this, but actually getting redress would
2 be quite a challenge. I mean, it's unfortunate that
3 it's already happened.

4 Q. So, let me ask you this question: Why after
5 finding out about this Breach didn't you go out and get
6 protection for this concern and to check your bank
7 statements and look at your credit reports to see if, in
8 fact, your information had been used if this is a
9 concern?

10 A. Well, it may sound stupid today, but I was
11 thinking this settlement is going to provide me some of
12 that protection, and like I said, I had been so busy,
13 that, you know, since that day that I wrote this, this
14 is the first day that I actually thought much about this
15 again, because I had been so busy and I knew for my
16 deposition, I had to get out and look at some of these
17 papers and look at them. I think your making a great
18 point, but just don't tell my wife you're making that
19 point.

20 Q. Well, but Mr. Cochran on the 19th, you
21 actually made an assessment that the settlement was not
22 adequate, because hackers could use this information
23 years from now, but you did nothing to check to see if
24 it had happened to you already.

25 A. Yeah, I guess that makes me human.

1 Q. And you're an educated man, aren't you?

2 A. Yes, I am. I think that I will do it now, now
3 that you have brought it to my attention, but it is a
4 true statement and I am giving you a true answer as to
5 why I wrote Number 1, and as it relates to Number 2 as
6 well. Those were the concerns that I had. And then
7 there is, of course, the third concern.

8 Q. So these studies that you refer to, what
9 studies are you talking about?

10 A. I don't remember referring to studies?

11 Q. You say in Paragraph 2 that "studies show that
12 hackers often use the compromised information years
13 after the damages claims period under the settlement has
14 expired." Did I read that correctly?

15 A. Yes, you did. I thought you meant that I
16 testified just now to that. What I am referring to is
17 the Internet search that I dedicated myself to that day
18 in finding various articles.

19 A couple of them were by expert security --
20 cyber security experts who found that hackers tend to
21 hold information like this for periods longer than
22 10 years, particularly, if it involves social security
23 numbers, which is a very viable piece of information.

24 I may have -- I can check my computer.
25 Sometimes, what I'll do is I'll download an article. I

1 don't know if I did or not, but I'll be glad to check to
2 see if I had downloaded any information.

3 Q. So you can identify by name the studies or the
4 authors here today?

5 A. Let me think. I'll try to remember.

6 Like, I say, and for some reason, I remember
7 Maryland, the Attorney General. I can't remember if he
8 was referring to a study himself, but he was quoted in
9 conjunction with this settlement as being very concerned
10 about this.

11 The best I can do today is to say, I would be
12 happy to look to see if I have downloaded any of that
13 and provide it for you.

14 Q. Are you aware whether or not the credit
15 monitoring provided here provides an insurance policy?

16 A. Yes, I think it's a million dollar policy.

17 Q. And what does the million dollars guard
18 against?

19 A. And where would that be? Oh, that would be
20 part of the recovery. Then, you're right. I wasn't
21 thinking of that.

22 Q. Yes. For people who sign up for credit
23 monitoring like you, you get a million dollar coverage.
24 You'd agree that's pretty good relief, isn't it?

25 A. Yes. I just don't know the specifics of how

1 that works. I'd have to live long enough to --

2 THE WITNESS: Did you have to help him
3 with that? I'm just kidding. Good job.

4 MR. YANCHUNIS: Well, that's why
5 Mr. Barthle is here.

6 MR. BARTHLE: I'm used to that.

7 THE WITNESS: That was excellent.

8 BY MR. YANCHUNIS:

9 A. But anyway, I just forgot about that. You're
10 right, a million dollars. That's how you get paid, but
11 will that coverage expire, you know, with the 10 year
12 monitoring period? Presummably. Hey, how about just
13 adding another -- extending the coverage of that million
14 dollar policy? I don't know how much that would cost
15 then, but then again how would you prove that it's
16 traceable back to this particular incident?

17 Q. Had you read the policy?

18 A. No.

19 Q. You state in your next paragraph that
20 "proposed attorneys fees are excessive because most of
21 the pretrial activity in the brief life span of this
22 case was spent on settlement negotiations and
23 confirmatory discovery.

24 Consequently, I do not believe the Court
25 should add a multiplier to class action's Lodestar."

1 A. Right.

2 Q. Did I read that correctly?

3 A. Well, to "class counsel's Lodestar."

4 Q. Oh, "class counsel's Lodestar." I stand
5 corrected. And that is your position here today?

6 A. Yes.

7 Q. Okay. But you don't quibble with the fact
8 that the lawyers that achieved this result should be
9 paid for their services?

10 A. Not at all.

11 Q. And you understood that the lawyers in this
12 case, which I am one, took the case on a contingent
13 basis?

14 A. Yes.

15 Q. And you further understand that lawyers in
16 contingency base cases, the lawyers have to advance the
17 costs to pay the experts that are required?

18 A. Yes.

19 Q. And you know that was done in this case?

20 A. Yes.

21 Q. What are the attorney fees sought by the
22 lawyers in this case?

23 A. As I recall in the initial settlement, class
24 Counsel agreed to seek 25 percent of the \$310 million
25 initial settlement, which is now presented as slightly

1 over 20 percent, because of the 70 million that was,
2 subsequently, added and that is of the financial
3 benefits.

4 Q. Do you know if this case is pending in the
5 11th Circuit Court of Appeals?

6 A. Yes.

7 Q. Do you know what the 11th Circuit decision or
8 authority is on Attorneys fees in consumer class
9 actions?

10 A. I read it this morning. It follows Johnson,
11 but I forget the name of the case. It adopts the
12 Johnson factors.

13 Q. You're referring to Johnson verses Georgia
14 Highway Express?

15 A. Yes.

16 Q. Are you also familiar with Camden?

17 A. That's it. I'm not familiar with it. I read
18 it this morning. It's 11th Circuit law adopting Johnson
19 as Camden.

20 Q. Are you familiar with whether or not the 11th
21 Circuit finds presumably reasonable a certain percentage
22 of the results achieved in a class action settlement?

23 A. Yes.

24 Q. And what is that?

25 A. 25 percent of the pull.

1 Q. And how much is the percentage being sought in
2 this case?

3 A. 25 percent of the pull.

4 Q. So you just don't like what the 11th Circuit
5 has said?

6 A. Well, no. Since this is part of what I do
7 also. As you know, that is the starting point of the
8 analysis. It can be adjusted up or down, depending on a
9 lot of factors.

10 Q. In the class case that you tried, the Malone
11 case --

12 A. Yeah.

13 Q. -- of which was not appealed, what was your
14 fee in that case?

15 A. It was one-third.

16 Q. That was fair compensation for you?

17 A. Well, it's a very small class action. Yeah.

18 Q. Okay.

19 A. I don't know how much over my Lodestar it was.
20 My bigger concern here is the Lodestar.

21 Q. What's the basis for your statement that most
22 of the pretrial activity in the brief life span of this
23 case was spent on settlement negotiations and
24 confirmatory discovery?"

25 A. I think it was your Motion for Preliminary

1 Approval that said that the announcement came from
2 Equifax in September of 2017.

3 In a few pages down they say, we've -- is what
4 I call an early settlement proposal, that once in a
5 while you'll have defense counsel who analyses it and
6 sees that this is a strong case and approaches or
7 initiates early settlement discussions, and as a matter
8 of fact, the same month, September of 2017.

9 So from my experience that told me a lot and
10 there were like five or six settlement conferences. I
11 think, a lot of them were headed by a very well-
12 respected retired Judge, and there was a term sheet that
13 was eventually signed and the government had to get
14 involved and then there was the finalized settlement
15 agreement, but that's why I say that a lot of that time
16 spent, and I will grant you this, you guys survived the
17 Motion to Dismiss. I do want to give you credit for
18 that. That was a huge step.

19 Q. How about selecting the representative-
20 plaintiffs in the claims? How big of an undertaking and
21 how much time did that take?

22 A. I have no idea.

23 Q. The lawyers should be compensated for that,
24 shouldn't they?

25 A. Yes.

1 Q. It's important to pick the right
2 representative-plaintiffs to make certain they're
3 adequate, correct?

4 A. Yes.

5 Q. You understand the context of adequacy under
6 Rule 23?

7 A. Yes.

8 Q. And you understand that the company vigorously
9 contested the viability of that complaint by filing a
10 Motion to Dismiss, correct?

11 A. I know they filed a Motion to Dismiss. I'm
12 sure that's a well-known firm. I'm sure everything they
13 do is vigorous.

14 Q. King and Spaulding Law Firm?

15 A. Yes. Yes.

16 Q. That's one of the largest firms in the
17 country?

18 A. I believe so.

19 Q. Yeah, the FBI Director. Were you aware that
20 he was a former partner at that law firm?

21 A. No, I didn't know that.

22 Q. But that was not a laid down Motion to
23 Dismiss, was it?

24 A. I guess.

25 Q. Let me ask you this: Did you read the Briefs

1 that were --

2 A. No. I didn't have time to read. I would like
3 to just for entertainment and to learn things, but I
4 didn't have time.

5 Q. Did you read the response that was filed by
6 the lawyers for the plaintiffs in the punitive class?

7 A. You mean, the reply Brief?

8 Q. Well, the response Brief. But, yes.

9 A. I'm sorry, response. No, I didn't read any of
10 the Briefs in the Motion to Dismiss.

11 Q. Do you know how many hours was spent in that
12 endeavor?

13 A. No.

14 Q. Do you know how many experts the plaintiffs
15 lawyers engaged to advance the interests of the class in
16 this case?

17 A. No.

18 Q. Do you know how much money was spent on those
19 experts?

20 A. I'm trying to think if I ever read something
21 that alluded to that. I don't know why. A million?
22 No, I don't know. I can't remember anyway.

23 Q. Do you know whether or not those experts were
24 involved in any way and to what extent in the case, or
25 whether the prosecution or the settlement or drafting a

1 relief?

2 A. No, I don't.

3 Q. Are you aware of how many hours the lawyers in
4 this case spent on behalf of the plaintiffs and the
5 class?

6 A. I read it, but I can't remember it. I know
7 that their Lodestar is around \$20 million.

8 Q. Would 31,000 hours --

9 A. Yes.

10 Q. -- refresh your recollection?

11 A. Yes. Plus, they anticipate 10,000 future
12 hours.

13 Q. Do you know whether or not there was any
14 billing protocol in place?

15 A. I believe there was.

16 Q. And you understand the purpose of a billing
17 protocol?

18 A. Yes.

19 Q. What is that?

20 A. So the Court can evaluate whether there's --
21 what is reasonable and document it and whether there's
22 double billing or overlapping.

23 We sometimes look for that, the amount, the
24 billable rates, and are they within the customary range
25 of that area for that specialty. Both, the senior

1 associates and paralegals, and all of that.

2 Q. You're aware of also that a billing protocol
3 is also used by leadership to ensure that lawyers
4 engaged in working in the case are working appropriately
5 on behalf of the class?

6 A. Yes.

7 Q. And you are aware that no lawyer working on
8 behalf of the plaintiffs in the class have received any
9 compensation up until this point?

10 A. I'm aware of that.

11 Q. And you're aware that since those lawyers are
12 getting paid on a periodic basis, there's no reason to
13 work more than they need to work in order to get the job
14 done?

15 A. I'm not sure. Could you rephrase the
16 question?

17 Q. Yes. As a contingent lawyer, you're not
18 compensated for the time that you spend on a client's
19 endeavor of the case, unless you prevail, correct?

20 A. Can I answer it in my own way?

21 Q. Answer it the way that --

22 A. Okay.

23 Q. Please.

24 A. Okay. When your fee has to be approved by a
25 Court as to reasonableness, the chances of approval --

1 the hours that you expend are irrelevant in the Court's
2 consideration.

3 Q. What I'm trying to say is as a contingent
4 lawyer, you try to be efficient, right?

5 A. Yes. Just say forget class actions for a
6 minute. Yeah, contingent lawyer. Yeah, you try to be
7 efficient.

8 Q. And you don't have any reason to believe that
9 the lawyers in this case weren't trying to be efficient
10 since there was no certainty that we would get paid if
11 we didn't win?

12 A. I'm not comfortable speculating on that. I
13 will say that there is an issue of what you're devoting
14 your time to. You know, pre-litigation activity is
15 worth more and it requires more skill than certain other
16 things.

17 Q. And that's true in class litigation?

18 A. Yes.

19 Q. How many class cases have been tried in any
20 calendar year since Rule 23 came into existence in the
21 Federal Rules of Procedure?

22 A. Wow, I flunked that one. I have no idea.

23 Q. Not many. Would that surprise you?

24 A. What is your question again?

25 Q. How many class cases have gone to trial?

1 A. Oh, to trial. I know that there's probably
2 under five percent.

3 Q. You understand that it's hard in this legal
4 environment to certify a class case, correct?

5 A. It's gotten harder in recent years.

6 Q. Were you aware of what the rule is in the
7 Northern District of Georgia about Discovery when a
8 Motion to Dismiss is pending?

9 A. No.

10 Q. So would it surprise you that you can't take
11 Discovery while a Motion to Dismiss is pending?

12 A. No, it wouldn't surprise me.

13 Q. Do you know what work was being done by
14 investigators or the lawyers that employed them to
15 develop the facts despite formal discovery?

16 A. No.

17 Q. Do you know how many FBI Agents and former FBI
18 Agents I have in my law firm?

19 A. No.

20 Q. Do you know what work they did in this case?

21 A. No.

22 Q. In the 11th Circuit, are you aware of how
23 Courts can calculate the percentage of the Attorneys
24 fees sought or to be sought?

25 A. Could you rephrase the question?

1 Q. Yes. Do you know if in the 11th Circuit, how
2 the percentage of the fee to the common or the
3 settlement, how that's calculated?

4 A. Generally speaking.

5 Q. And what is that?

6 A. If I understand the question, you look
7 primarily at the financials. You know, at the
8 settlement pool, and there's a question on whether you
9 have to deduct expenses first.

10 I'm not sure what their position is on that
11 and I'm also a little unclear as to whether and to what
12 extent, if any, they give credit for. You know, for the
13 non-economic factors.

14 Q. Like, the billion dollars that Equifax is
15 obligated to spend on information and security and
16 technology?

17 A. Yeah. It's been my experience that rarely
18 does any Court that I've been in with these national
19 class actions, go that far. They tend to be a little
20 more conservative.

21 Q. Do you know what the law in the 11th Circuit
22 is?

23 A. I am going to say, no.

24 Q. How about the value of the credit monitoring?
25 Do you know what the value of that is?

1 A. I probably read it at one point, but I forget.

2 Q. Now, this objection contains all of your
3 opinions about the settlement, correct?

4 A. All that I am allowed to present. Yes.

5 Q. Having gone through the Deposition at this
6 point, are there any objections that you've raised here
7 that you would like to rescind or withdraw?

8 A. No.

9 Q. What's your ultimate goal with your objection?

10 A. This is very unusual, because Number 1, I'm a
11 class member not representing someone else. Number 2, I
12 was mainly focused on my wife's situation in Items 1 and
13 2, apart from the fee issue. I'm not going to the
14 Fairness Hearing. I'm not represented by Counsel. I
15 really just wanted to voice my concern to the District
16 Court and I'm very curious to see.

17 I understand there's been a couple of other
18 well-known objector lawyers that have filed extensive
19 briefing, which I haven't had time to read, but I assume
20 that they are going to be looking at the fee issue as
21 well, and other issues with the settlement.

22 So I see no reason to be any more involved
23 really. I think I would just sit back and watch to see
24 what the District Court's opinion is.

25 Q. You want the settlement not to be approved and

1 to fail?

2 A. No, I'd like it to be improved.

3 Now, I realize that the Court cannot change
4 one term of the settlement. It would mean back to the
5 drawing board. So, no, I'm not -- I'm looking for,
6 maybe, a better success.

7 Q. You understand the concept and the compromise,
8 don't you?

9 A. Yeah.

10 Q. In litigation?

11 A. Yes.

12 Q. And in compromise you have to weigh the risks
13 of getting nothing for getting something, correct?

14 A. Of course.

15 Q. And you don't know of any bigger settlement of
16 a data breach case, other than this one? I think we
17 talked about that.

18 A. But I don't know a bigger or larger class
19 that's been effected either.

20 Q. So what would you want to see improved here?

21 A. Some fee reduction. I'm asking for no
22 multipliers. You know, if the Court just reduced
23 something, not all the way to no multiplier, but reduce
24 the multipliers.

25 I think it's latest is 3.5 or so of the money.

1 I might be happy with that, but I would have to see an
2 analysis.

3 Q. So if the 11th Circuit says it's presumably
4 reasonable that lawyers should get 25 percent, forget
5 about the multiplier?

6 On the common fund you're entitled to a
7 percentage. If it's under 125 percent or 25 percent, do
8 you have any problems with that?

9 A. As I said earlier that begins the analysis and
10 then the burden shifts to show why it should be adjusted
11 upward or downward. All that is, like you say, it is a
12 rebuttable presumption, not irrebuttable presumption.

13 Q. Okay. But we are not talking about a
14 multiplier here at this point. We are talking about a
15 percentage.

16 A. I know. In fact, I'll even go so far as to
17 not concede, but I seem to remember whether it's
18 recently or back on this date that the 11th Circuit
19 doesn't use Lodestar as a cross-check all that
20 rigorously.

21 It might be one of those Circuits that doesn't
22 use it, but I think that, particularly, of course, you
23 have got to add the Mega Fund principle to this too, but
24 that's only one factor.

25 Some of these guys try to say that's the only

1 factor that matters. No. It's not that simple. It's
2 all kinds of factors, but I do think when you combine
3 the fact that this was a case that was going to get
4 resolved for something from the beginning in a
5 relatively short time and that, you know, that the
6 Lodestar is so high.

7 Obviously, you need to get paid for every
8 single hour you guys did for everything and it should be
9 a reasonable hourly rate and everything. I am just
10 waiting to see what the District Court does with that.

11 They might just affirm it as is or it may
12 reduce. Now, that they can, they can reduce that
13 because that as you know is separate from the settlement
14 agreement. It has two different lifes to it.

15 As to the settlement itself, I expect that the
16 Court is going to almost laugh at my Number 1.

17 That is sincerely how I felt the day that I
18 wrote this, because of my wife's situation.

19 And not a lot of other people are saying this,
20 I don't think. I know that there are at least hundreds
21 of other objectors. I don't know. What the heck!

22 Was Ted Frank responsible for that somehow.
23 He got them all to write this mass campaign or
24 something?

25 Q. I don't know.

1 A. I just think that's how I was -- but anyway,
2 I'm rambling at this point.

3 Q. Where was the McConnell Decision during the
4 settlement negotiations?

5 A. I didn't even know about McConnell until you
6 told me.

7 Q. So if, eventually, the Supreme Court said
8 there's no common law duty to maintain the privacy of
9 information, would that indicate to you that it was a
10 given and this case would be settled from the day we
11 filed it?

12 A. Well, the day you filed it is different from
13 the day that McConnell came out. You know, you look at
14 the risks. The risks factors are at the beginning when
15 you take on the case.

16 Q. But you don't know whether McConnell --

17 A. It changes. Then, it changes, obviously. It
18 changes dramatically. And, apparently -- unfortunately,
19 he had a settlement before that decision, right? Is
20 that what you're telling me.

21 Q. The Supreme Court Decision had not yet come
22 out. Do you know whether if the Appellate Court
23 decision had come out?

24 A. I wasn't familiar with the case to be honest
25 with you.

1 Q. So, other than, the Attorneys fees being
2 lowered, what else would you like to see happen in
3 connection with this case?

4 A. For the settlement to re-think -- for the
5 parties to rethink about -- actually, you've helped me
6 to solidify it today. Maybe, extending the term of the
7 insurance policy.

8 Q. Okay.

9 A. You know, the free service cuts off.
10 Maybe the free service is even shorter or
11 whatever, but put more of the money into the insurance
12 premium.

13 Q. And how do you think that McConnell now
14 decided by the Georgia Supreme Court would affect that
15 discussion about the reading of this?

16 A. I would have to read the case. Not to speak
17 out of turn, but it sounds like you are implying that
18 the Fair Credit Reporting Act failed.

19 Q. It failed.

20 A. That does surprise me.

21 Q. Are you aware of the Fair Credit Reporting Act
22 ever surviving a Motion to Dismiss in a data breach
23 case?

24 A. I don't know one way or the other. I know
25 that this is an emerging area of law. There's a lot of

1 data breaches.

2 In fact, we just had a CLA Conference last
3 year in Kentucky, but I just read quickly the ACT; the
4 pertinent language of the Act itself. It seemed like it
5 applied, but I have been wrong before.

6 Q. Do you know if whether or not any lawyer who
7 has asserted has been able to get it past a Motion to
8 Dismiss?

9 A. No, but I know you wouldn't have included it,
10 unless, you had a good faith basis for doing it. I
11 don't know.

12 Q. Okay. We already talked about the fact that
13 you decided not to opt out because of the difficulty in
14 handling this case on your own.

15 A. Correct.

16 Q. It was very costly for any consumer, because
17 of the experts?

18 A. Yes.

19 Q. And, of course, what would you personally be
20 able to get with your case if you had not sustained any
21 loss or damage?

22 A. I would be seeking -- I wouldn't do it, but I
23 would be seeking reporting. Like, in one case that I
24 have where it's a mold case in the City of Louisville,
25 it was going to be difficult. They couldn't get an

1 expert on the causation of mold exposure as to some
2 physical symptoms of a police officer that I had
3 represented, so instead we went for medical monitoring.

4 Q. In that period of years -- in that case, you
5 had a police officer who had an injury, though, correct?

6 A. Symptoms consistent with mold exposure.

7 Q. In your case in your individual situation, you
8 don't have any damage or a --

9 A. No.

10 Q. -- sustainable injury, correct?

11 A. No. As you well-pointed out, I don't even
12 know, because I didn't even bother to check, but I will
13 check. But no, I think it would have shown up in some
14 other way by now.

15 Q. How many class actions have you objected to
16 individually or personally?

17 A. I think it's -- I thought about this. I think
18 it's the first one, but I could be wrong.

19 Q. You state in your objection that "to the best
20 of my recollection, I have not objected to another class
21 action settlement to which I am a class member during
22 the last five years."

23 Is that still your best recollection?

24 A. Yes. I don't recall ever doing it, but the
25 notice covers the last five years.

1 Q. You've represented other individuals in
2 connection with their objections to class action
3 settlements, though, however, correct?

4 A. Yes.

5 Q. How many times?

6 A. Probably, a couple of dozen.

7 Q. And what span of time does that cover, "a
8 couple of dozen objections?"

9 A. Probably 10 years. It looks like you are
10 saving some admonition for the end here.

11 - - -

12 Exhibit No. 4

13 was marked for the purposes
14 of identification.

15 - - -

16 MR. YANCHUNIS:

17 Q. Let me show you a document which I will mark
18 for the purposes of identification as Exhibit Number 4,
19 and it proports to be an Objection to Class Counsel's
20 Motion for Attorney's Fees filed in the case of Joseph
21 Gregorio versus Premier Nutrition Corporation filed in
22 the United States District Court for the Southern
23 District of New York.

24 Are you familiar with this document?

25 A. Yes.

1 Q. Is this an objection that you filed on behalf
2 of a Dave Mager?

3 A. Mager? Yes.

4 Q. Is Mr. Mager kin to you?

5 A. No.

6 Q. Did you know him before you filed this
7 Objection on his behalf?

8 A. Yes.

9 Q. And how do you know him?

10 A. He's been a life-long friend and a former
11 client.

12 Q. And in this case you took the position that
13 the class counsel should receive a fee of no more than
14 1.8 million or 20 percent of the total cash value of
15 this settlement; correct?

16 A. It appears so.

17 Q. And the request in that case was that the
18 lawyers wanted a third?

19 A. Yes.

20 Q. And again in this case the lawyers are seeking
21 20 percent of the minimum settlement fund cash value?

22 A. Yes.

23 Q. Okay. So had the lawyers in that case sought
24 20 percent, you wouldn't have a problem with it? You
25 had a problem with the fact that they wanted a third?

1 A. Every case has distinct facts. I don't think
2 we can compare two cases.

3 Q. Why not?

4 A. Because every case has distinct facts.

5 Q. Yes. The data breach litigation is a very
6 distinct area of the law of the practice; isn't that
7 true?

8 A. As far as I know, yes.

9 Q. And you know of no case in which Plaintiff's
10 lawyers have certified a damage class in a damage data
11 breach, correct?

12 A. I think I already said, "I wasn't aware."

13 Q. So that would make this a high risk case,
14 correct?

15 A. I'm not comfortable conjecturing about that.

16 Q. Well, you would agree with me that if there
17 were other class cases where plaintiff's lawyers in a
18 data breach class case had certified a damage class,
19 that would make this case perhaps less risky with that
20 kind of history out there?

21 A. Yes. I'm going to correct something also, if
22 I could also? You said, "20 percent," but my position
23 is you should go by the 310 million. I see. It's 25
24 percent.

25 Q. I'm sorry?

1 A. My position is that you guys are requesting 25
2 percent as stated in your initial settlement of the 310
3 million, not 20 percent of the 380.

4 Q. And why should the lawyers not get the benefit
5 of the 380.5 million cash fund?

6 A. Because it was at the involvement of the
7 government entity.

8 Q. In what way?

9 A. There was already a settlement for 310
10 million, and, then, I think the settlement was subject
11 then to getting the government on board and I know you
12 guys were involved in that.

13 I know you didn't just go home and -- I know
14 that there was some involvement in that, but you cannot
15 take full credit. They won't let us go that far.

16 Q. Do you know what the level of involvement was
17 to the point of the plaintiffs lawyers in this case, in
18 connection with increasing the settlement amount to
19 380.5 million?

20 A. I recall reading something today. I can't
21 remember what it was. It might have been a declaration,
22 or whatever, stating that, but for your involvement, it
23 would not have happened, and particularly about setting
24 a deadline and that they would not have moved, but for
25 the deadline.

1 I appreciate the way it was stated in the
2 Brief.

3 Q. And you have no reason to challenge the
4 voracity of the statement in there?

5 A. I have no reason to.

6 Q. Okay. What about the credit for the \$125
7 million dollars that is potentially available to pay
8 out-of-pocket claims? Should the lawyers for the
9 plaintiffs get credit for that?

10 A. This is where it gets muddy because of
11 Class-Action Law and how to apply a percentage, you
12 know, since it's not guaranteed and it's not in the
13 present tense.

14 It clearly has to be discounted as to whether
15 it should be zero percent, 50 percent or valued. I
16 don't know.

17 Q. Why isn't it guaranteed?

18 A. It may not be needed for one thing.

19 Q. Okay. But if it's needed, it's there to pay
20 the claims, correct?

21 A. Yeah. I'm not sure that it goes into the
22 pockets of the consumers or if it pays for services.
23 That I cannot remember.

24 Q. So you are not aware that the \$125 million
25 dollars is available to pay additional out-of-pocket

1 claims of consumers who have claims?

2 A. I cannot remember how it's written.

3 Q. So if that is the case, should the lawyers --
4 should the percentage factor that into consideration?

5 A. If it is the case, it should be factored in at
6 some reduced value.

7 Q. Which is what?

8 A. That is beyond my pay grade to decide.

9 Q. Should any value be assigned to the minimum
10 cash commitment by Equifax in connection with the
11 information security in related technology expend?

12 A. It's my opinion that given the catastrophe
13 that resulted from this data breach and how ridiculous
14 it was that one employee had failed to implement a
15 patch, and how long it took to discover that, and then
16 to even report it to the Board.

17 For their survival, they had to do this
18 whether there was a lawsuit or not.

19 In my opinion they would have had to spend
20 that money to show both so that it doesn't happen, and
21 to minimize it happening again, and to show the stock
22 orders and the rest of the market that they were serious
23 about learning from this.

24 Q. So it's your position that lawyers and the
25 experts that the lawyers employed with that expertise in

1 cyber-security had no role into getting this component
2 of the settlement? It would have happened without them
3 or without us?

4 A. I won't go that far. I would say that some
5 form of program and the corresponding expense would have
6 had to have happened. To say how much and when and the
7 detail specifics, that's more of conjecture.

8 What I am saying is it would be difficult to
9 value that. Number A, it's already harder when it's
10 non-monetary. You know, it's more of a cost for a
11 program, rather than a settlement pool, because the law
12 favors when it comes to Attorneys fees, the known factor
13 of the settlement pool. And then, secondly, it's more
14 of in the future, I guess.

15 Q. Well, we know that they have to pay a billion
16 dollars -- over a billion dollars. That's known, isn't
17 it?

18 A. You brought that up earlier and I did not. I
19 said that they are duty bound under the agreement to
20 dedicate that. I thought it was an estimate of what it
21 was going to cost.

22 Yeah, that's worth something. I don't know
23 how to evaluate that. I'm not sure how the Court's
24 going to. I guess, we'll know soon enough.

25 Like, I say, I'm just really interested and

1 fascinated by the case too. I look forward to reading
2 his final order.

3 Q. In your objection, you note that there was
4 less than four months passed between the filing and
5 settlement.

6 A. I remember writing that. Yeah.

7 Q. What do you base that on?

8 A. I thought you were looking at this one.

9 Q. Oh, yeah. This one. I'm looking at your --

10 A. This one?

11 Q. Yes.

12 A. Exhibit four?

13 Q. Yes.

14 A. What page is that on?

15 Q. Let me see. Page 3. It right's there in the
16 first paragraph.

17 A. Sure. "Instead, shortly after filing suit,
18 the parties agree to retain a private mediator as a
19 result less than four months passed between filing and
20 settlement." I'm looking at the docket.

21 Q. And how long had this case been pending?

22 A. Between what two events?

23 Q. The filing of the case and its settlement?

24 A. The initial settlement?

25 Q. There's been more than one settlement?

1 A. Well, there was the final settlement
2 agreement, but then there's the term sheet, which I
3 can't remember when that was.

4 Was it, maybe, two years between the filing
5 and the -- but my point is that much of that was
6 dedicated to -- think of it in terms of how we spend our
7 attorney time.

8 Much of it was dedicated to working out and
9 I'm not even making light of that. There's a lot of
10 work that went into it and it's very, very complexed.
11 One of the more complexed settlement agreements.

12 Q. How many hours of the 31,000 hours went into
13 the settlement?

14 A. I don't know.

15 Q. How many hours were spent by the lawyers
16 representing the plaintiffs for any particular component
17 of the case? Putting together the complaint, then the
18 plaintiffs, and then the Discovery?

19 A. I don't think I've seen the itemized fee
20 statements.

21 Q. Now, you as I understand it, your objection in
22 the Gregorio case was overruled?

23 A. I can't even remember. I believe so.

24 Q. And you filed an appeal of the final judgment
25 in this case?

1 A. I can't even remember. Do you have something
2 that helps me?

3 Q. I do.

4 MR. YANCHUNIS: Are we up to five?

5 MR. BARTHLE: (Agreed in the
6 affirmative.)

7 BY MR. YANCHUNIS:

8 A. It shouldn't be that hard to remember. This
9 is 2018?

10 - - -

11 Exhibit No. 5

12 was marked for the

13 purposes of identification.

14 - - -

15 BY MR. YANCHUNIS:

16 Q. Let me show you a document that I have marked
17 for purposes of identification as Exhibit 5. Do you
18 recognize that as a Notice of Appeal that you filed?

19 A. Yes.

20 Q. Okay. And what was the date that was filed
21 on?

22 A. February 2, 2019.

23 Q. Okay. And what was the disposition of that?

24 A. Why don't you tell me.

25 Q. You don't remember?

1 A. Because I can't remember.

2 Q. Okay.

3 A. It's embarrassing. That's this year. That
4 might help me to see it.

5 - - -

6 Exhibit No. 6

7 was marked for the purposes
8 of identification

9 - - -

10 BY MR. YANCHUNIS:

11 Q. Okay. Let me show you a document that's been
12 marked as Exhibit 6. This is a stipulation that you
13 signed along with Burson and Fisher in that case?

14 A. Yes.

15 Q. Okay. And did this case -- your appeal was
16 dismissed without any payment of cost and attorneys
17 fees, correct?

18 A. It appears so.

19 Q. So you got paid nothing? You didn't get paid
20 anything?

21 A. According to this, I can't remember.
22 According to this, no.

23 Q. Now, you filed an objection in the Anthem case
24 on behalf of a Leona Boone, correct?

25 A. I vaguely remember that.

1 Q. Who's Leona Boone?

2 A. My sister-in-law.

3 Q. And you voluntarily dismissed the appeal of
4 the final judgment in that case, correct?

5 A. As I recall.

6 Q. And do you recall that your basic objection in
7 that case is that the attorneys fees were too high?

8 A. I don't recall.

9 Q. What was the outcome of your appeal?

10 A. Can you tell me what year that was?

11 Q. You dismissed your appeal.

12 - - -

13 Exhibit No. 7

14 was marked for the purposes

15 of identification.

16 - - -

17 BY MR. YANCHUNIS:

18 MR. YANCHUNIS: Well, let's go ahead and
19 get the document in here. I have marked for
20 identification purposes an Order entered in connection
21 with your appeal, correct?

22 A. Yup.

23 Q. And this Order indicates that your appeal was
24 voluntarily dismissed?

25 A. Yes.

1 Q. Were you compensated in any way for your
2 decision to dismiss this appeal?

3 A. If it was dismissed voluntarily, it was likely
4 a settlement agreement in which all of my settlement
5 signed agreements have a confidentiality provision, so
6 I'm not allowed to discuss that.

7 Q. So you were paid?

8 A. I'm not allowed to answer that question.

9 Q. Well, I'm not asking you the amount.

10 A. In my opinion that would possibly be violating
11 the terms of the confidentiality clause, so I
12 respectfully decline to answer that question.

13 Q. So I need to get Judge Thrash to order you to
14 answer that?

15 A. If you would like. Then, at least I'll have a
16 court Order.

17 Q. Okay. Are you familiar with the case
18 called --

19 A. I could possibly save you time. I'm not going
20 to discuss any settlement agreement.

21 Q. Are you familiar with an individual by the
22 name of Barbara Cochran?

23 A. That's my sister.

24 Q. And you have filed an objection on her behalf
25 before?

1 A. Yes.

2 Q. And was that a case called Morrow versus ANN
3 Inc.?

4 A. I don't even remember that one.

5 Q. How many objections to settlements have you
6 filed on behalf of your sister, Barbara?

7 A. Oh, more than one. Two or three, something
8 like that.

9 Q. Have you ever been paid to withdraw your
10 objection or any appeal to a final judgment in any of
11 the cases in which you represented Barbara Cochran?

12 A. I, respectfully, decline to answer that
13 because I believe it would violate the confidentiality
14 provision.

15 Q. Do you know a Vicky Mager?

16 A. Yes.

17 Q. Is she the wife of your long-time friend, Dave
18 Mager?

19 A. No. She's his sister-in-law.

20 Q. Do you know a Melissa Schultz?

21 A. Yes. I believe that's Vicky's daughter.

22 Q. Okay. And you represented them as objectors
23 in a case called Mohegan versus Ascena Retail Group?

24 A. Yeah.

25 Q. And you, eventually, appealed the final

1 judgment, but dismissed that appeal, correct?

2 A. As I recall.

3 Q. Were you paid to dismiss the appeal?

4 A. Again, I respectfully decline to answer, as I
5 believe it would violate the confidentiality provision
6 of the settlement agreement.

7 Q. One of the cases that you represented your
8 daughter Barbara Cochran in was --

9 A. You mean, my sister.

10 Q. Your sister. I'm sorry.

11 A. Yes.

12 Q. Jabbari versus Wells Fargo?

13 A. It sounds familiar.

14 Q. Do you recall that your sister filed a prose
15 objection and later you entered an appearance on her
16 behalf?

17 A. Yeah. That also sounds familiar.

18 Q. Has that matter been resolved or is it still
19 pending?

20 A. I believe that's still pending.

21 Q. Are you familiar with a case called Perkins
22 versus LinkedIn Corporation?

23 A. Yes.

24 Q. And in that case you represented a lawyer by
25 the name of Olen York?

1 A. Yes.

2 Q. How do you know Mr. York?

3 A. He was a colleague of mine in my Louisville
4 office in Louisville, Kentucky.

5 Q. And you took an appeal to the 9th Circuit? A
6 final judgment entered in that case too, correct?

7 A. As I recall.

8 Q. And that appeal was dismissed, correct?

9 A. I believe so.

10 Q. Were you compensated to withdraw your appeal
11 or compensated in any way?

12 A. I can't even remember on that one.

13 Q. But you wouldn't tell me if you were, correct?

14 A. That's correct. I'm trying to save you some
15 work.

16 Q. That's all right. It's my passion and my
17 purpose. There's a case called Stericycle Inc.
18 Stericycle or Sterisafe? Stericycle.

19 A. Stericycle, yeah.

20 Q. You are familiar with that case?

21 A. Yes.

22 Q. And you represented Lee Morrow?

23 A. Yes.

24 Q. How do you know Mister or Lee Morrow?

25 A. He's a long-time friend and a former client.

1 Q. In that case you objected to the fees that
2 were being sought by the plaintiffs lawyers?

3 A. I believe so.

4 Q. And in that case did you take an appeal from
5 the final judgment?

6 A. I'm not sure.

7 Q. Do you know if you were paid in that case to
8 not file an appeal or to dismiss it if you did?

9 A. I respectfully decline to answer because I
10 believe it would violate the confidentiality provision
11 of the settlement agreement.

12 Q. There's a case called Golloher vs. Todd
13 Christopher International. Are you familiar with that
14 case?

15 A. Not really.

16 Q. You represented class member Jennifer Cochran?

17 A. That's my daughter.

18 Q. And you do recall that case now?

19 A. I recall representing her in a case, but I
20 don't recall the case right now.

21 Q. And in that case, you also took an appeal from
22 a final judgment. Would that refresh your recollection?

23 A. No, but I believe you.

24 Q. You filed a Motion to Dismiss the appeal which
25 was granted in or around September of 2015.

1 Do you recall that?

2 A. Not really.

3 Q. Do you know why the appeal was dismissed?

4 A. No, I am not sure, but something tells me that
5 we just dismissed it without a settlement agreement, but
6 I'm not sure about that.

7 Q. If you file objections to final judgments
8 approving settlements, why do you dismiss them if you
9 get paid?

10 A. I haven't said that I get paid.

11 Q. I'm asking the question assuming that you did.

12 A. Well, then rephrase the question.

13 Q. Yes. Why do you keep on dismissing appeals
14 that you file from final judgments approving
15 settlements?

16 A. I think now I have to object, because you are
17 talking attorney work-product and privileged
18 information.

19 Q. Not because you got paid to do that, but you
20 objected on that basis?

21 A. I respectfully decline to answer that question
22 on the grounds that it might violate a confidentiality
23 provision.

24 Q. There's a case called, In Re: National
25 Football League Players Concussion case. Are you

1 familiar with that case?

2 A. Yes.

3 Q. And you represented Curtis Anderson?

4 A. Yes.

5 Q. Who is Mr. Anderson?

6 A. He is a former NFL player.

7 Q. Any relation to you or is he a friend?

8 A. No. He responded to some kind of, you know,
9 one way communication that was sent to, I think, Ohio
10 NFL players, and then he called me.

11 Q. Did you object to the fees in that case?

12 A. Yes.

13 Q. In the Automotive Parts Antitrust litigation,
14 you represented Olen York, Amy York and Nancy York?

15 A. Yes. And Olen is the same colleague from the
16 Louisville office, and wife, and mother, I believe.

17 Q. Amy would be his wife and Nancy would be his
18 mother?

19 A. Yes, I think.

20 Q. Are you still objecting in that case?

21 A. No.

22 Q. Were you paid any sum of money to withdraw
23 your position as an objector in that case?

24 A. I respectfully decline to answer on the
25 grounds that it might violate a confidentiality

1 provision of the settlement agreement.

2 Q. A case called Pappas versus Naked Juice
3 Company of Glendora Inc. Do you remember that case?

4 A. I remember the name Pappas, that's all.

5 Q. You represented a Bradley and Sara Henry?

6 A. That's my daughter and son-in-law.

7 Q. The basis of that objection was the attorneys
8 fees; is that correct?

9 A. I can't remember.

10 Q. You paid to withdraw your objection or your
11 appeal in that case?

12 A. That's the Pappas case?

13 Q. Yes, sir.

14 A. I honestly can't even remember what became of
15 that case.

16 Q. There's a case called Volz, V-o-l-z versus
17 Coka Cola. You represented Bradley Henry and Wanda
18 Cochran.

19 A. Wanda's my wife and Brad's my son-in-law, and
20 I don't remember anything about that case. I'm sorry.

21 Q. So you don't recall objecting to that on the
22 basis of the attorneys fees?

23 A. No, I can't recall.

24 Q. So you had a Toyota Motor Corporation
25 Unintended Acceleration. Do you recall representing an

1 Amelia Ranieri and a Hassan Hein?

2 A. Yes.

3 Q. Friends of yours again?

4 A. No. If you're asking me how I --

5 Q. How did you come to know them?

6 A. It had to be some kind of a one way
7 communication. That's the only way that I would do it.
8 I just don't remember how right now.

9 Q. And you objected to the fees in that case,
10 correct?

11 A. I wish I had a better memory, but I believe
12 you, if that is what you are saying. I can't recall
13 specifically.

14 Q. When you withdrew your objection, was that in
15 exchange for compensation?

16 A. I, respectfully, decline to answer on the
17 grounds that it may violate a confidentiality provision
18 in the settlement agreement.

19 Q. In the In Re: TFT LCD Antitrust Litigation,
20 you represented a Maria Marshall, a Wayne Marshall and a
21 Jerry Marshall.

22 A. Yes.

23 Q. Who are the Marshalls to you?

24 A. Jerry is my sister Barbara's one of her
25 life-time friends, and I think her two -- one or both of

1 them are her daughters.

2 Q. And in that case you also objected to the
3 attorneys fees?

4 A. I believe so.

5 Q. And you, subsequently, withdrew your
6 objection? Was that because you got paid?

7 A. Did I withdraw an objection or dismiss an
8 appeal?

9 Q. Well, I'll say that it's one in the same. You
10 dismissed an appeal.

11 A. Okay. I decline to answer that question on
12 the grounds that I stated before.

13 Q. Demmick vs. Cellco Partnership. Wanda Cochran
14 was a class member who objected to the settlement.
15 You're related to Wanda, aren't you?

16 A. My wife.

17 Q. What was the basis for the objection in that
18 case?

19 A. I wish I could remember.

20 Q. That appeal was dismissed, was it not?

21 A. I don't remember.

22 Q. You appealed the final judgment?

23 A. Well, it was dismissed. Yeah.

24 Q. Were you paid for withdrawing the dismissal of
25 the appeal?

1 A. I can't remember that case at all to be
2 honest.

3 Q. How do you arrive at the percentages of what
4 you believe to be fair compensation for lawyers in class
5 action settlements?

6 A. The facts of the case.

7 Q. What facts? How hard it is to litigate?

8 A. Well, I would say all of the factors that are
9 considered by that jurisdiction.

10 Q. Complexity? Risk Assessment?

11 A. Yeah, the 10 factors. Whatever, you know.

12 Q. And then time spent and outcome?

13 A. Sure.

14 Q. So if the fee is based upon the factor of
15 whether it would be Johnson versus Georgia Highway
16 Express, Camden 1 or Camden 2, then you're fine with the
17 outcome?

18 A. You need to say that one again. I'm getting
19 tired.

20 Q. If the attorneys fees that are awarded by a
21 Court --

22 A. Uh-huh.

23 Q. Well, let me say this: If the attorneys fees
24 sought by the lawyers are based upon the factors in that
25 Circuit -- in the 11th Circuit here, Johnson versus

1 Georgia Highway Express, or Camden 1 or Camden 2, that
2 would be an appropriate amount?

3 A. Not necessarily. Where the battle is or the
4 issue is, you might claim that they meet all of the
5 factors, and then at least an objector may say, "no, you
6 don't and here's why." So it's all a matter of the
7 proof, it's in the pudding like. Just because you're
8 citing a factor does no mean you are satisfying the
9 factor.

10 Q. So if a Judge decides based upon his
11 assessment as a neutral and according to the factors of
12 that jurisdiction in this case, Johnson versus Georgia
13 Highway Express or the Camden decisions that, that fee
14 sought is reasonable, you don't have any problem with
15 that, correct?

16 A. Of course, I could have a problem with it.
17 That's what I'm looking to see what the opinion is. If
18 I disagree -- if in some way he abuses discretion
19 according to the legal standards, then, of course, I
20 would have a problem with it.

21 Q. Abuse of discretion is a pretty high standard,
22 isn't it?

23 A. Yes. It's a high hurdle.

24 Q. And you have some doubt that Judge Thrash is
25 going to abuse his discretion in this case?

1 A. I am a neutral observer. I don't know. I
2 don't have an opinion one way or the other. I'm just
3 eager to see his decision.

4 Q. Well, he's a Chief Judge over the Municipal in
5 Georgia?

6 A. Uh-huh.

7 Q. Do you know anything about his reputation or
8 legal acumen?

9 A. No.

10 Q. Do you know anything about his education?

11 A. No. But the way you're looking at me, it's
12 just so effective. You have this look, like your eyes
13 are burning at me.

14 Q. Well, I don't mean to do that.

15 A. No. You're just good at it.

16 Q. Well, when you have been up since 1:00 o'clock
17 in the morning --

18 A. Oh, geez.

19 Q. -- that's what you end up with.

20 A. Oh, my. I'm sorry to hear that. No, I mean
21 you have been very professional.

22 Q. Thank you.

23 A. Very, very good.

24 Q. So were you aware that he went to Harvard Law
25 school?

1 A. No.

2 Q. I don't know even if I could get on campus.

3 A. My brother went to Harvard.

4 Q. Good for him. Is your brother name Edward.

5 A. Yes. Can we not bring up Edward?

6 Q. He's a lawyer here in Ohio, isn't he?

7 A. Yes.

8 Q. You don't have a good relationship with him?

9 A. No, I love Ed.

10 Q. Okay. Well, I'm not going to take it to him.

11 He's an objector in other class settlements, isn't he?

12 A. I don't know if he still does or not. There
13 was a time that he was active.

14 Q. Is he your older brother?

15 A. Yeah.

16 Q. You look younger than he does.

17 A. Well, he's 70. So I think he's winding down.

18 MR. YANCHUNIS: Why don't we take a break.

19 THE VIDEOGRAPHER: Okay. The time now is
20 3:20.

21 THE WITNESS: About five minutes?

22 MR. YANCHUNIS: Yes, sure.

23 (Whereupon, a recess was taken.)

24 THE VIDEOGRAPHER: We are back on the record
25 and the time now is 3:38.

1 MR. YANCHUNIS: Mr. Cochran, I don't have any
2 further questions. I appreciate you coming here today.

3 THE WITNESS: Wow, that was a pleasant
4 surprise.

5 MR. YANCHUNIS: You have the right to review
6 and sign your deposition in the event it's transcribed.

7 Do you want to reserve that right or waive?

8 THE WITNESS: I prefer to reserve the right,
9 but I feel now that you have no little time pressure
10 here, I didn't know if you wanted to use any of it for
11 the Fairness hearing or not. Doesn't that come up real
12 soon?

13 MR. YANCHUNIS: No. Let's go off the record.

14 THE VIDEOGRAPHER: We have been off the
15 record.

16 (Whereupon, the deposition concluded at 3:40 p.m.)

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1 The State of Ohio,)
2) SS:
2 County of Cuyahoga.)

3 I, Donna S. Smith, Court Reporter, hereby
4 certify that the transcript in the above-captioned
5 proceedings was taken by me by means of machine
6 shorthand and reduced to writing by computer-aided
7 transcription under my direction.

8 I further certify that the foregoing
9 proceedings is a true and accurate transcript of
10 the proceedings, that I am neither a relative to
11 any of the parties associated with the case, nor
12 am I interested in the events or outcome of these
13 proceedings.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal of office in Warrensville Heights,
16 Ohio 44128, this, 15th day of December, 2019.

17

18

19 Donna S. Smith,
20 Court Reporter and
 Notary Public, for the
 State of Ohio

21

My Commission Expires:
9-27-2021

22

23

24

25